

GOH JIT LAM v. TUNKU MAHERAN

[A.C.J. (Syed Agil Barakbah J.) May 28, 1974]
[Alor Star — Civil Appeal No. 8 of 1973]*Landlord and Tenant — Vacant possession — Delivery up of — Discretion of magistrate — Whether properly exercised — Control of Rent Act, 1966, s. 16(1)(a) and (3).*

The appellant was ordered to quit and deliver up vacant possession of premises belonging to the plaintiff-respondent as a result of the plaintiff's filing an action against the appellant-defendant for arrears of rent under section 16(1)(a) of the Control of Rent Act, 1966. The magistrate made an absolute order for possession of the premises solely on the ground that the appellant-defendant had a bad record of payment of rents. All the grounds of appeal centred on the main issue relating to the exercise of the discretionary power of the magistrate under section 16(3).

Held: (1) it is a well settled principle that an appellate court will be slow to interfere with the discretion exercised by a lower court unless it is clearly satisfied that the discretion has been exercised in a contrary way or that there has been a miscarriage of justice. There is a presumption that the judge has rightly exercised his discretion;

(2) in this case the learned magistrate came to the right conclusion that the appellant had a bad record (of rent payment) and there was sufficient evidence for him to come to the conclusion that it was a case in which it would be reasonable to make an absolute order for possession.

Cases referred to:-

- (1) *Dellenty v. Pellow* [1951] 2 K.B. 858.
- (2) *Evans v. Bartlam* [1937] A.C. 473.
- (3) *Ratnam v. Cumarasamy & Anor.* [1965] 1 M.L.J. 228, P.C.
- (4) *Penang Motors (1950) Ltd. v. Suah Motors* [1959] M.L.J. 133.

CIVIL APPEAL.

Karpal Singh for the appellant.

N. Chandran for the respondent.

Syed Agil Barakbah J.: This is an appeal against the order of the learned magistrate, Alor Star, made on 22nd March, 1973, whereby the appellant was ordered to quit and deliver up vacant possession of premises No. 101, Jalan Langgar, Alor Star, to the plaintiff at the end of six months from the date of the order and other reliefs. The appellant was the defendant in the court below in Civil Action No. 292 of 1972. He was the tenant of the said premises as assignee of the interest of his father Goh Boon Kam, deceased. The respondent, plaintiff in the court below, as the landlord of the said premises filed the action against him for arrears of rent under section 16(1)(a) of the Control of Rent Act, 1966. Before the proceeding in the court below, the appellant deposited into court a sum of \$1,250 being arrears of rent.

The main question in this appeal is whether the learned magistrate adequately exercised his discretion under section 16(3) of the Act. Mr. Karpal Singh for the appellant conceded that the case came under section 16(1)(a) of the Act as the rent lawfully due was in arrear for fourteen days or upwards and that the premises were controlled premises within the definition of the Act.

There are four grounds of appeal all of which are centred on the main issue relating to the exercise of the discretionary power of the learned magistrate under section 16(3). In this regard, the learned magistrate in considering his power under the section stated in his grounds of judgment as follows:—

A "The learned solicitor for the defence submitted that whereas in *Dellenty v. Pellow*⁽¹⁾ the defendant had repeatedly been summoned to court, his client had not been subjected to court proceedings and that therefore the said authority should not be followed. I regret I could not accept the learned solicitor's reasoning. The fact that his client had not been previously summoned to court simpliciter, does not go to show that the defendant enjoyed a clean record. The plaintiff could have commenced action for possession of the said premises way back in 1971 when she first served a notice to quit on the defendant but like a good and reasonable landlord the plaintiff gave the defendant another chance after receiving fresh assurance from him.

B In my opinion having regard to the record for payment of rent vis-a-vis the said premises by the defendant, I found that it was reasonable and just that this court should enter judgment for an order for absolute possession of the said premises."

C It is clear from the above that the learned magistrate had in mind the provisions of the section, considered the facts and surrounding circumstances made available to him during the proceedings and concluded it was reasonable and just for him to enter judgment for the plaintiff for an order for absolute possession of the said premises.

D Now, it is a well settled principle that an appellate court will be slow to interfere with the discretion exercised by a lower court unless it is clearly satisfied that the discretion has been exercised in a contrary way or that there has been a miscarriage of justice. There is a presumption that the judge has rightly exercised his discretion. (See *Evans v. Bartlam*⁽²⁾ as quoted in *Ratnam v. Cumarasamy & Anor.*⁽³⁾).

E It is alleged in the first ground that the learned magistrate erred in law in making an absolute order for possession of the premises solely on the ground that the defendant "had a bad record" on payment of rents, following the decision of *Dellenty v. Pellow*, *supra*, the facts of which are at variance with those of the instant case. In *Dellenty's* case the evidence showed that there had been a long history of default on the part of the tenant resulting in the necessity for the landlord to issue a summons against him from time to time before the rent could be extracted. Subsequently the tenant allowed his rent to fall into arrear again for more than a year and did not pay until the summons was issued and the case was about to be heard. It was held that under the circumstances it was reasonable to make an absolute order for possession. In the present case, however, the learned magistrate said at page 20 of his grounds of judgment:—

F "...the defendant has had a bad record on payment of rents. I noticed from the agreed bundle of documents that the defendant's history on rent default dates back to November 1970, and that arrears of rent were only settled after repeated remainders and under threat of eviction."

G In this regard, it was urged that a written undertaking by the appellant to pay the monthly rental of \$50 in advance direct to the respondent's agents without demand was made on 29th April, 1971. Hitherto, the common law practice for the landlord to demand rent lawfully due on the premises was necessary. (See *Penang Motors (1950) Ltd. v. Suah Motors*⁽⁴⁾). The appellant testified that no demand had been made by the landlord though he was in arrear of rent and that when he sent the rent to the agent of the landlord it was returned unaccepted together with the notice to

quit dated 4th April, 1972. In the circumstances, it was submitted it cannot be said that he was in arrear of rent until a lawful demand for payment is made and the fourteen days' period for the purposes of the Control of Rent Act can only be said to run as from that date. In my view a perusal of the series of correspondence between the solicitors of the parties concerned shows a different story. It is clear that prior to the written undertaking in Ex. P7, the appellant was well aware of the existence both by agreement and established practice over many years of the rents having been paid at the office of Messrs. Cooper Brothers & Co., Chartered Bank Chambers, Penang. (See Ex. P4). That was not denied by the appellant in subsequent correspondence. In fact the appellant through his solicitors agreed to forward all rentals in the future to the respondent's agents in Penang. (See Ex. P5). Subsequently on 29th April, 1971, the appellant through his solicitors gave a written undertaking to pay all future rents punctually. In the circumstances the question as to the demand of rents by the landlord or her agent should not have arisen at all. I think it was in this regard the magistrate referred to when he said the respondent/landlord would have commenced action for possession way back in 1971 on the strength of the first notice to quit (Ex. P2) but like a good and reasonable landlord she gave him another chance after receiving fresh assurance from the appellant/tenant. That answers the second and third grounds of this appeal.

The fourth ground states, *inter alia*, that in considering reasonableness under section 16(3) the learned magistrate should have considered that the premises were being run as a coffee shop and the making of an absolute order for possession would cause the appellant considerable hardship and loss of goodwill in business apart from there being no availability of alternative premises for him to reside or carry on business. I agree with the submission of Mr. Chandran for the respondent in that no evidence whatsoever was adduced by the appellant at the trial as regards the facts and circumstances surrounding the issue raised apart from the fact that the appellant was running a coffee shop. Thus, without going into any legal implication involved, I am of the opinion that there was no sufficient nor reasonable grounds for the learned magistrate to have considered them and I do not consider that this ground holds water at this stage. The question of reasonableness depends on the facts and circumstances adduced by evidence during the proceeding.

Considering the available evidence in this case, I hold that the learned magistrate came to the right conclusion that the appellant has a bad record and acted on the principles propounded in *Dellenty v. Pellow*, *supra*. There was sufficient evidence for him to come to the conclusion that it was a case in which it would be reasonable to make an absolute order for possession although the rent was actually paid into court before judgment. This is not a case of mere inadvertence but of a deliberate omission on the part of the appellant.

The appeal is therefore dismissed with costs.

Appeal dismissed.

PUBLIC PROSECUTOR v. LAI AH BEE

[A.Cr.J. (Chang Min Tat J.) May 30, 1974]

[Penang — Criminal Appeal No. 25 of 1974]

Dangerous Drugs Ordinance, 1952, ss. 12(2) and 37(b)(d) and (g) — Presumption under — Possession not established by evidence — Whether various presumptions raised — Custody and control — Knowledge.

The accused was in a room in a house under the raised platform floor of which were found 3 tins of opium lying on the ground. Access to the location of the tins was from outside the house by crawling under the house. This was an appeal by the Public Prosecutor against an order of acquittal and discharge in the lower court where the respondent had been charged under section 12(2) of the Dangerous Drugs Ordinance 1952. The Public Prosecutor contended on appeal that the accused was the occupier of the premises. Reliance was placed on three presumptions contained in the Ordinance viz. section 37(b), (d) and (g).

Held: (1) mere presence in one of the two rooms of the house without more did not show that she had or appeared to have the care or management of the house and the presumption that she was the occupier could not be raised;

(2) where the possession is not established by evidence, the prosecution has to prove that the accused had in her custody or under her control (the drug) before she could be deemed until the contrary be proved to be in possession of the drug and to know the nature of the contents. In this case as the three tins were found under the floor boards and access was possible only from outside, the prosecution did not raise the presumption;

(3) knowledge by itself that the drug was concealed in the premises was not sufficient to fasten possession on the accused. It was only one of the ingredients of possession.

Cases referred to:-

(1) *Leow Nghee Lim v. R.* [1956] M.L.J. 28.

(2) *Public Prosecutor v. Ong Chang Sow* [1954] M.L.J. 82.

CRIMINAL APPEAL.

T. Selveruthirathan (Deputy Public Prosecutor) for the appellant.

C. V. Prabhakaran for the respondent.

Chang Min Tat J.: On 6 August 1973 at 11.20 a.m. a police party raided premises No. 2943 Jalan Raja Uda, Butterworth. At that time, the accused and a girl carrying a child were in the house. The accused was in a room just opposite the kitchen. The girl with the child was in the kitchen.

The police found nothing incriminating inside the room. But one officer was astute enough as to raise a mat covering part of the floor, which was a raised platform. Through the holes in the floor, this officer saw 3 tins lying on the ground. The tins however could not be recovered from the room. An officer had to go outside and crawl under the platform before he could recover the 3 tins.

Inside the 3 tins were 19 tubes, some of which contained heroin, of a total weight of 3.919 grammes.

The accused was charged with the offence of possession under section 12(2) of the Dangerous Drugs Ordinance No. 36 of 1952.

It was apparent at the trial that the prosecution relied on the various presumptions under the Ordinance. The first was section 37(b) which reads —